

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Kelly Schultz, individually and on behalf of
all other similarly situated,

No.: 19-CV-02813 (DWF/DTS)

Plaintiff,

VS.

Nations Info Corp., a California corporation

Defendant.

ANSWER
(Jury Trial Demanded)

Defendant Nations Info Corp (“Nations Info”) files this answer to plaintiff Kelly Schultz’s Class Action Complaint (the “Complaint”). To the extent that any allegation in the Complaint is not specifically admitted, the allegation is denied. Nations Info denies all allegations contained in headings and unnumbered paragraphs, and Nations Info denies all allegations except for those expressly admitted below. Nations Info answers the corresponding numbered paragraphs of the Complaint as follows:

INTRODUCTION

1. Nations Info is a provider of real estate and financial information services to consumers.

ANSWER: Nations Info admits that it is a provider of real estate and financial information services and denies the remaining allegations in Paragraph 1.

2. Nations Info operates RentBeforeOwning, a paid-membership platform that connects consumers with rent-to-own properties together with access to property financing:



Knowledge and tools to identify homes to rent and
purchase with non- traditional financing options

2

ANSWER: Nations Info admits that it operates RentBeforeOwning, an online real estate subscription service that provides consumers with access to a nationwide database of rent-to-own, lease-option and other niche property listings. Nations Info denies the remaining allegations in Paragraph 2. Nations Info cannot verify the authenticity of the cropped screenshot and therefore denies it.

3. In an effort to market and expand its RentBeforeOwning platform, Nations Info engages in a number of marketing initiatives including, and as relevant to this case, the use of affiliates and text message telemarketing.

ANSWER: Nations Info admits that it markets RentBeforeOwning and denies the remaining allegations in Paragraph 3.

4. Nations Info, either directly or through its affiliates, sends text message solicitations without first obtaining any consent from the consumer, let alone prior express consent as required by the TCPA.

ANSWER: Nations Info denies the allegations in Paragraph 4.

5. To make matters worse, Nations Info sends these solicitation text messages to consumers who registered their phone numbers on the DNC registry for the specific purpose of avoiding these types of unwanted marketing solicitations.

ANSWER: Nations Info denies the allegations in Paragraph 5.

6. To avoid suspicion of its illegal text message telemarketing, Nations Info has created a series of different websites to solicit memberships while at the same time hiding its identity in an attempt to shield itself of liability for violating the TCPA.

ANSWER: Nations Info denies the allegations in Paragraph 6.

7. In Plaintiff's case, Nations Info sent at least two autodialed text messages to her cellular phone without having her consent and despite the fact that Plaintiff had registered her phone number on the DNC more than 30 days prior to receiving the text messages.

ANSWER: Nations Info denies the allegations in Paragraph 7.

8. In response to these text messages, Plaintiff files this class action lawsuit seeking injunctive relief requiring Nations Info to cease sending unsolicited, autodialed text messages to consumers' cellular telephone numbers, and to other phone numbers registered on the DNC, as well as an award of statutory damages to the members of the Classes.

ANSWER: Nations Info denies the allegations in Paragraph 8, denies that Plaintiff is entitled to any relief, and denies that a class is certifiable in this action.

PARTIES

9. Plaintiff Schultz is a resident of Zimmerman, Minnesota, which is located in Shurburne County.

ANSWER: Nations Info lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 and therefore denies them.

10. Defendant Nations Info is a Goleta, California corporation. Nations Info does business throughout this District, the State of California, and throughout the United States.

ANSWER: Nations Info admits that it is a California corporation and denies the remaining allegations in Paragraph 10.

JURISDICTION AND VENUE

11. This Court has federal question subject matter jurisdiction over this action under 28 U.S.C. § 1331, as the action arises under the TCPA, which is a federal statute. The Court also has jurisdiction under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), et seq. because there are over 100 members of the alleged classes, there is minimal diversity, and there is over \$5,000,000 at issue when the claims of the Class are aggregated. Further, none of the exceptions to CAFA apply.

ANSWER: To the extent Paragraph 11 states a legal conclusion, no answer is required. To the extent an answer is required, Nations Info denies the allegations in Paragraph 11.

12. This Court has personal jurisdiction over Defendant and venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant is incorporated in this State and maintains its principal place of business in this District, and because the wrongful conduct giving rise to this case emanated from Defendant from within this District.

ANSWER: Nations Info denies the allegations in Paragraph 12.

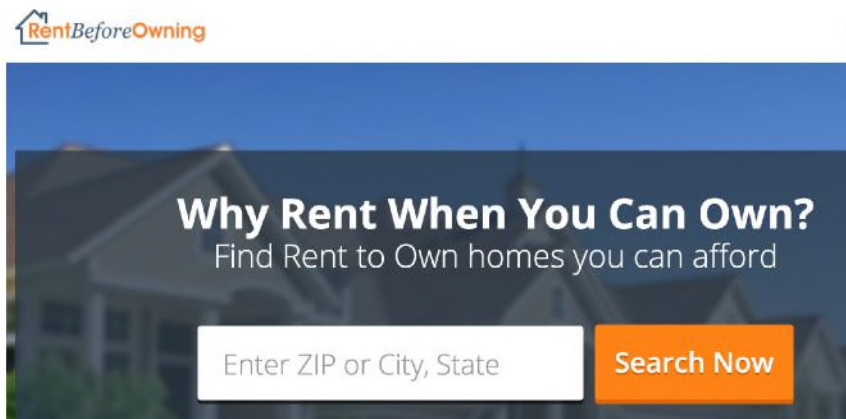
COMMON ALLEGATIONS

Nations Info Markets its Products by Placing, or Having Placed On its Behalf Unsolicited Text Messages

13. Texts sent by or on behalf of Nations Info are solicitations for Nations Info’s rent-to-own membership services.

ANSWER: Nations Info denies the allegations in Paragraph 13.

14. Nations Info’s rent-to-own pages, such as RentBeforeOwning.com, begin by offering consumers a search option to locate rent-to-own homes:



ANSWER: Nations Info admits that RentBeforeOwning offers a search option to find rent-to-own homes and denies the remaining allegations in Paragraph 14. Nations Info cannot verify the authenticity of the cropped screenshot and therefore denies it.

15. Nations Info owns manages RentBeforeOwning.com. On the RentBeforeOwning.com website, Henry Kim is referenced as the Affiliate Manager⁴ Kim is the Chief Marketing Manager for Nations Info. Additionally, both RentBeforeOwning.com and Nations Info are located at the same physical address:

Additional Contact

You can also contact us at
600 Pine Ave Goleta, CA 93117

Santa Barbara **Primary**

600 Pine Ave, Goleta, CA 93111, US

[Get directions](#)

ANSWER: Nations Info admits that Nations Info owns RentBeforeOwning.com, that Henry Kim is listed as the Affiliate Manager on RentBeforeOwning.com, that Henry Kim is the Chief Marketing Officer for Nations Info, and that Nations Info and RentBeforeOwning.com are

located at 600 Pine Ave, Goleta, CA 93117, and denies the remaining allegations in Paragraph 15. Nations Info cannot verify the authenticity of the cropped screenshots and therefore denies them.

16. When a consumer clicks on “Search Now”, from the main page on RentBeforeOwning.com, they then proceed to complete a series of survey questions regarding the type of property they would like to rent. The option is then presented for the consumer to save their profile and receive a “FREE Debt Relief Analysis”:



ANSWER: Nations Info denies the allegations in Paragraph 16. Nations Info cannot verify the authenticity of the cropped screenshot and therefore denies it.

17. And when a consumer clicks on “View Homes,” they are given the option to sign-up for a 7-day membership trial:

Your Trial Price: Just \$1.00

Credit Type:

Card Number:

Exp Date:

CCV #: [what is this?](#)

Terms of Use and Pricing Information
 By clicking the button below, you agree to the [Terms of Use](#) and to be enrolled in the 7 day trial for the amount of \$1.00. Your account will be activated immediately. You may cancel at any time via our toll-free telephone line at (888) 586-0824. After the trial expires on May 14, 2019, your enrollment will automatically continue and your account will be charged \$49.95 per month until you cancel. If you cancel your account during the trial, there will be NO FURTHER CHARGES. For full subscription terms, please see the Terms of Use.

I agree and accept. VIEW HOMES!

ANSWER: Nations Info denies the allegations in Paragraph 17.

18. As per the image above, the cost for the trial membership is \$1.00. If the consumer does not cancel the membership within 7 days, they are charged \$49.95 per month until the membership is cancelled.

ANSWER: Nations Info denies the allegations in Paragraph 18.

19. The unsolicited text messages sent to Plaintiff Schultz and the members of the proposed classes advertised these same or similar membership subscription services.

ANSWER: Nations Info denies the allegations in Paragraph 19.

Defendant Sends Text Messages Directly and/or Hires Affiliates to Send Text Messages Directing Consumers to Defendant's Websites

20. Nations Info also operates an affiliate program that it advertises on its website landing pages for rent-to-own properties:

Do you have an affiliate program?

Yes! We have a partner program with industry-leading payout. For more information, please call our affiliate manager, Henry Kim at 818-879-1538 or contact us here.

[Contact Us](#) | [Privacy Policy](#) | [Terms of Use](#)

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ANSWER: Nations Info admits that it has affiliates and denies the remaining allegations in Paragraph 20. Nations Info cannot verify the authenticity of the cropped screenshot and therefore denies it.

21. The Federal Communication Commission (FCC) has provided instructions stating that sellers such as Nations Info may not avoid liability under the TCPA simply by outsourcing their telemarketing:

[A]llowing the seller to avoid potential liability by outsourcing its telemarketing activities to unsupervised third parties would leave consumers in many cases without an effective remedy for telemarketing intrusions. This would particularly be so if the telemarketers were judgment proof, unidentifiable, or located outside the United States, as is often the case. Even where third-party telemarketers are identifiable, solvent, and amenable to judgment limiting liability to the telemarketer that physically places the call would make enforcement in many cases substantially more expensive and less efficient, since consumers (or law enforcement agencies) would be required to sue each marketer separately in order to obtain effective relief. As the FTC notes, because “[s]ellers may have thousands of ‘independent’ marketers, suing one or a few of them is unlikely to make a substantive difference for consumer privacy.”

In re Joint Petition Filed by DISH Network, LLC et al. for Declaratory Ruling Concerning the TCPA Rules, 28 FCC Rcd. 6574, at ¶ 37 (2013) (“FCC 2013 Ruling”) (citations omitted).

ANSWER: To the extent Paragraph 21 states a legal conclusion, no answer is required. To the extent an answer is required, Nations Info denies the allegations in Paragraph 21.

22. In addition to the above statement from the FCC, Nations Info knowingly benefits from all of the marketing that is done on its behalf and has ratified any telemarketing.

ANSWER: Nations Info denies the allegations in Paragraph 22.

**Plaintiff Received Unsolicited Autodialed Text Messages to Her Cell
Phone Despite Being on the DNC List**

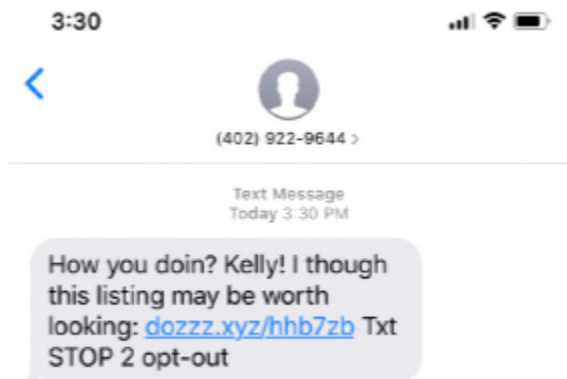
23. On March 25, 2017, Plaintiff Schultz registered her cellular phone number on the DNC to avoid receiving unwanted phone and text solicitations.

ANSWER: Nations Info lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 and therefore denies them.

24. Her cellular phone number is not currently associated with a business and is for personal use.

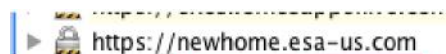
ANSWER: Nations Info lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 and therefore denies them.

25. On February 21, 2019 at 3:30 PM, Schultz received an unsolicited autodialed text message from, or on behalf of, Defendant on her cellular phone from 402-922-9644:



ANSWER: Nations Info denies that it placed a call to 402-922-9644. Nations Info lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 25 and therefore denies them.

26. Clicking on dozzz.xyz/hhb7zb leads first to omgxuta.com, which is believed to be a link tracking service, which then reroutes to newhome.esa-us.com:



ANSWER: Nations Info lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 and therefore denies them.

27. At the newhome.esa-us.com domain, the consumer is provided with a short survey regarding rent-to-own properties. When the survey is completed, the consumer is routed directly to ViewForeclosureHomes.com.

ANSWER: Nations Info lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 and therefore denies them.

Connection #1 – Connection ViewForeclosureHomes.com to Nations Info

28. The address in the privacy policy for ViewForeclosureHomes.com is:

ViewForeclosureHomes.com
PO Box 515381 #50291 Los Angeles, CA 90051
homes@viewforeclosurehomes.com

ANSWER: Nations Info lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28 and therefore denies them.

29. The PO Box address shown above is the same address used on the website ViewRentToOwnHomes.com. Both ViewForeclosureHomes.com and ViewRentToOwnHomes.com are website clones of each other, even using identical logos:



ANSWER: Nations Info lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 and therefore denies them.

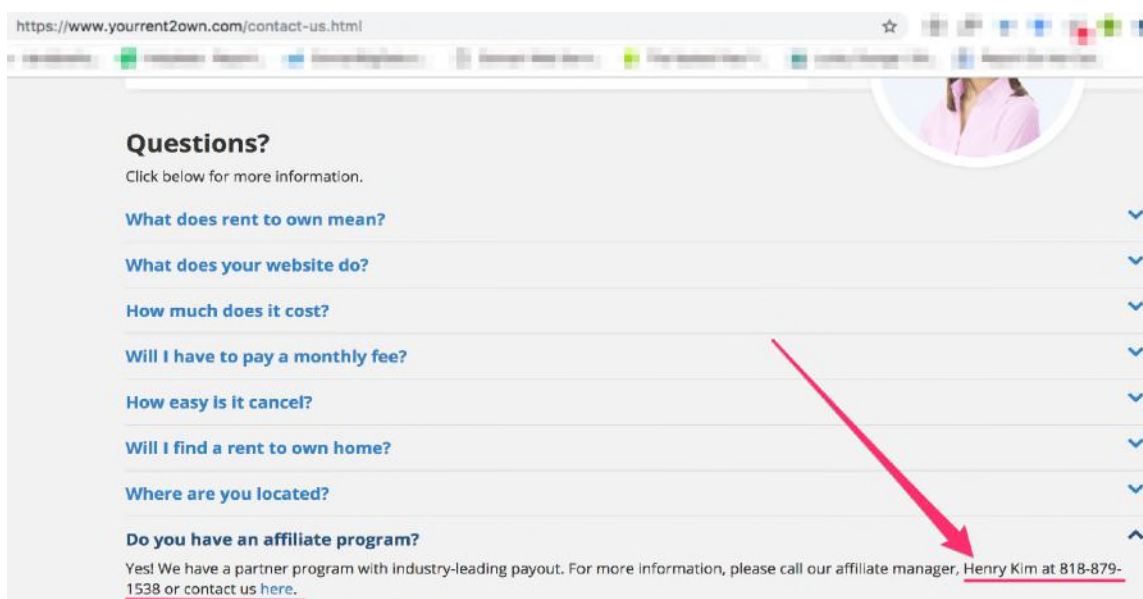
30. Both sites also offer the identical membership program detailed above, with a 7-day free trial, followed by a monthly membership cost.

ANSWER: Nations Info lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30 and therefore denies them.

31. On the ViewRentToOwnHomes.com website, the contact page shows that the contact email is support@yourrent2own.com.

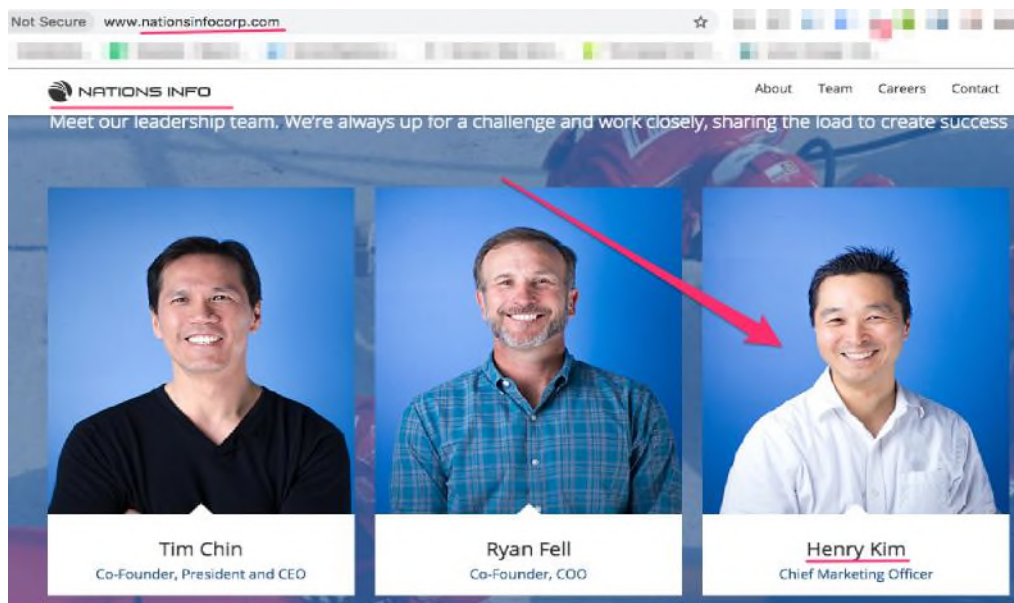
ANSWER: Nations Info lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 and therefore denies them.

32. The website YourRent2Own.com refers to Nations Info's affiliate program:



ANSWER: Nations Info lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32 and therefore denies them.

33. Henry Kim, the affiliate manager referenced in the above image, is the Chief Marketing Officer for Nations Info:



ANSWER: Nations Info admits that Henry Kim is the Chief Marketing Officer of Nations Info and denies the remaining allegations in Paragraph 33.

Connection #2 – Connecting ViewForeclosureHomes.com to Nations Info

34. Another link showing that Nations Info is responsible for, or benefits from the aforementioned text message that Plaintiff received is the Free Credit Score link. On the website ViewForeclosureHomes.com, there is a link for a “FREE Credit Score”:



ANSWER: Nations Info lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34 and therefore denies them.

35. Clicking on the “Free Credit Score” link brings up two websites, both of which are clones of RentBeforeOwning.com, a website owned by Nations Info:

- ▶ <http://www.srmmediadomain.com>
- ▶ <https://uib.ff.avast.com>
- ▶ <https://www.ultraforeclosures.com>
- ▶ <https://www.foreclosurefortunes.net>

As per the image above, the “Free Credit Score” link brings up UltraForeclosures.com and ForeclosureFortunes.net.

ANSWER: Nations Info lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 35 and therefore denies them.

36. The Terms and Conditions for UltraForeclosures.com and Foreclosurefortunes.com both reference getting help regarding text messages by texting “HELP” to shortcode 96863:

TEXT MESSAGING HELP:

To obtain help you may:

Text “HELP ” to 96863 to obtain help on your mobile phone.

Email us at: support@ultraforeclosures.com

Call us at: (866) 383-8872 M-F 6am-6pm Pacific Time

TEXT MESSAGING HELP:

To obtain help you may:Text “HELP ” to 96863 or to 76684 to obtain help on your mobile phone.

Email us at: support@foreclosurefortunes.net

Call us at: (855) 870-9261 M-F 6am-6pm Pacific Time

ANSWER: Nations Info lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 36 and therefore denies them.

37. Shortcode 96863 is a shortcode owned and managed by Nations Info as is seen on the website RentBeforeOwning.com:

TEXT MESSAGING HELP:

To obtain help you may:

Text HELP to 96863 to obtain help on your mobile phone.

Email us at: support@rentbeforeowning.com

Call us at: (888) 250-5563 M-F 6am-6pm Pacific Time

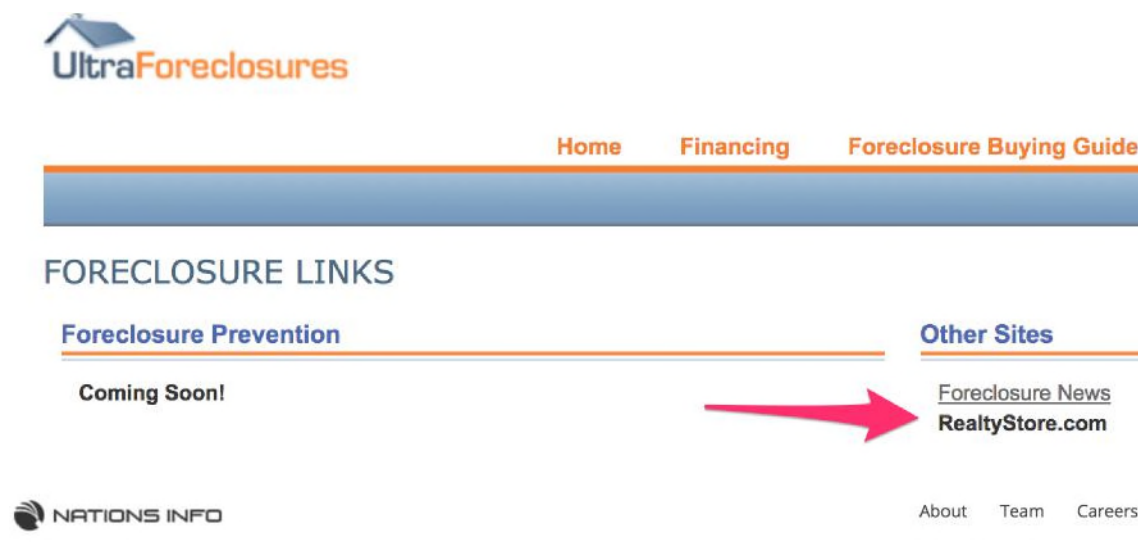
ANSWER: Nations Info admits that it owns the shortcode 96863. Nations Info denies the remaining allegations in paragraph 37.

Connection #3 – Connecting ViewForeclosureHomes.com to Nations Info

38. When a consumer clicks on “FREE Credit Score” on the ViewForeclosureHomes.com website, the consumer is forwarded to UltraForeclosures.com. As per the above, UltraForeclosures.com uses Shortcode 96863, which is owned by Nations Corp., and UltraForeclosures.com is a clone website of RentBeforeOwning.com, a site owned and managed by Nations Corp.

ANSWER: Nations Info lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38 and therefore denies them.

39. In addition, UltraForeclosures.com leads consumers with a direct link to RealtyStore.com, another website owned/controlled by Nations Info:



Platform Utilization

These helpful products and services leverage our platform to fulfill unique needs and add value



The broadest selection of real estate listings in the industry, including distressed property, nationwide



A low-cost, turn-key program for real estate agents to reach highly motivated home buyers and sellers

ANSWER: Nations Info admits that it owns and controls RealtyStore.com and denies the remaining allegations of Paragraph 39.

40. On March 24, 2019 at 10:00 AM, Schultz received a second autodialed text message on her cellular phone from, or on behalf of, Nations Info, this time supposedly from the phone number 833-869-4183:



ANSWER: Nations Info denies that it called 833-869-4183. Nations Info lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 40 and therefore denies them.

41. Clicking on furnished4clsdhomes.pw routes directly to https://eaze-listings.com/img/?aff_id=10&source=ED-CVSeeps-1-4-5:



ANSWER: Nations Info lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41 and therefore denies them.

42. At the eaze-listings.com domain, the consumer is provided with a short survey regarding rent-to-own properties. When the survey is completed, the consumer is taken directly to ViewForeclosureHomes.com—just like the first text message.

ANSWER: Nations Info lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42 and therefore denies them.

43. Plaintiff has never had a relationship with Nations Info and has never provided Nations Info express written consent to contact her.

ANSWER: Nations Info lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 43 and therefore denies them.

44. Plaintiff Schultz was not looking for a rental property or rent-to-own opportunity at the time she was called.

ANSWER: Nations Info lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 44 and therefore denies them.

45. The unauthorized text messages sent by Nations Info, as alleged herein, have harmed Plaintiff in the form of annoyance, nuisance, and invasions of privacy. They have also disturbed Schultz's use and enjoyment of her cellular phone, in addition to the wear and tear on the phones' hardware (including the phones' battery) and the consumption of memory on the phone. Text messages ring or vibrate alerting the phone user of their receipt. These messages interfere with and interrupt a user's experience, resulting in further annoyance and invasions of privacy.

ANSWER: Nations Info denies the allegations in Paragraph 45.

46. In addition, Defendant violated the DNC by sending two solicitation text messages within a 1-year period to Plaintiff's phone number, which had been registered on the Do Not Call registry for at least 30 days.

ANSWER: Nations Info denies the allegations in Paragraph 46.

47. Seeking redress for these injuries, Schultz, on behalf of herself and two Classes of similarly situated individuals, brings suit under the TCPA which prohibits unsolicited autodialed text messages to cellular telephones, including solicitation text messages to a phone number protected by the DNC.

ANSWER: To the extent Paragraph 47 states a legal conclusion, no answer is required. To the extent an answer is required, Nations Info denies the allegations in Paragraph 47.

CLASS ALLEGATIONS

Class Treatment is Appropriate for Plaintiff's TCPA Claims

48. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) and Rule 23(b)(3) on behalf of herself and all others similarly situated and seeks certification of the following Classes:

Autodialed No Consent Class: All persons in the United States who from four years prior to the filing of this action through class certification (1) Defendant (or an agent acting on behalf of Defendant) placed text message calls, (2) to the person's cellular telephone number, (3) using the text messaging platform Defendant used to place text message calls to Plaintiff, (4) for whom Defendant claims it obtained prior express consent in the same manner as Defendant claims it supposedly obtained prior express consent to text message Plaintiff.

Do Not Call Registry Class: All persons in the United States who from four years prior to the filing of this action through class certification (1) Defendant (or an agent acting on behalf of Defendant) texted more than one time; (2) within any 12-month period (3) where the person's telephone number had been listed on the DNC for at least thirty days; (4) for the same reason that Defendant texted Plaintiff; and (5) for whom Defendant claims it obtained prior express consent in the same manner as Defendant claims it supposedly obtained prior express consent to text message Plaintiff.

ANSWER: Nations Info denies the allegations in Paragraph 48 and denies that any class is certifiable in this action.

49. The following individuals are excluded from the Classes: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, its subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely request for exclusion from the Classes; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against Defendant have been fully and finally adjudicated and/or released. Plaintiff anticipates the need to amend the Class definition following appropriate discovery.

ANSWER: Nations Info denies the allegations in Paragraph 49 and denies that any class is certifiable in this action.

50. **Numerosity:** On information and belief, there are hundreds if not thousands of members of the Classes such that joinder of all members is impracticable.

ANSWER: Nations Info denies the allegations in Paragraph 50 and denies that any class is certifiable in this action.

51. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the Classes, and those questions predominate over any questions that may affect individual members of the Classes. Common questions for the Classes include, but are not necessarily limited to the following:

- (a) whether Defendant used an automatic telephone dialing system to send text messages to Plaintiff and the members of the Autodialed No Consent Class;
- (b) whether Defendant sent unsolicited text messages to phone numbers registered on the DNC;
- (c) whether Defendant's conduct constitutes a violation of the TCPA;

- (d) whether Defendant's system is an ATDS, and
- (e) whether members of the Classes are entitled to treble damages based on the willfulness of Defendant's conduct.

ANSWER: Nations Info denies the allegations in Paragraph 51 and denies that any class is certifiable in this action.

52. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Classes and has retained counsel competent and experienced in class actions. Plaintiff has no interests antagonistic to those of the Classes, and Defendant has no defenses unique to Plaintiff. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the members of the Classes and have the financial resources to do so. Neither Plaintiff nor her counsel has any interest adverse to the Classes.

ANSWER: Nations Info denies the allegations in Paragraph 52 and denies that any class is certifiable in this action.

53. This class action is also appropriate for certification because Defendant has acted or refused to act on grounds generally applicable to the Classes and as a whole thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Classes and making final class-wide injunctive relief appropriate. Defendant's business practices apply to and affect the members of the Classes uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct with respect to the Classes, not on facts or law applicable only to Plaintiff. Additionally, the damages suffered by individual members of the Classes will likely be small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's actions. Thus, it would be virtually impossible for the members of the Classes to obtain effective relief from Defendant's

misconduct on an individual basis. A class action provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

ANSWER: Nations Info denies the allegations in Paragraph 53 and denies that any class is certifiable in this action.

FIRST CAUSE OF ACTION

**Telephone Consumer Protection Act
(Violations of 47 U.S.C. § 227, et. seq.)
(On Behalf of Plaintiff and the Autodial No Consent Class)**

54. Plaintiff repeats and realleges paragraphs 1 through 52 of this Complaint and incorporates them by reference.

ANSWER: Nations Info incorporates its answers to the foregoing allegations as if fully set forth herein.

55. Defendant and/or its agents sent unwanted solicitation text messages to cellular telephone numbers belonging to Plaintiff and the other members of the Autodialed No Consent Class using an autodialer.

ANSWER: Nations Info denies the allegations in Paragraph 55.

56. These solicitation text messages were sent en masse without the consent of the Plaintiff and the other members of the Autodialed No Consent Class to receive such solicitation text messages.

ANSWER: Nations Info denies the allegations in Paragraph 56.

57. The text messages were sent using an automatic telephone dialing system (“ATDS”). Defendant used technology that had the capacity to randomly generate and store numbers and dial them from a pre-loaded list. The equipment shared characteristics of a predictive dialer and allowed for the sending of text messages en masse without sufficient human

intervention. Further discovery is needed regarding Defendant's system as only defendant possesses such information.

ANSWER: Nations Info denies the allegations in Paragraph 57.

58. Defendant failed to obtain prior express consent of any kind. There was no oral consent, and Defendant failed to obtain any written consent required under the TCPA or otherwise.

ANSWER: Nations Info denies the allegations in Paragraph 58.

59. Defendant has, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of Defendant's conduct, Plaintiff and the other members of the Autodialed No Consent Class are each entitled to between \$500 and \$1,500 for each and every text message.

ANSWER: Nations Info denies the allegations in Paragraph 59.

SECOND CAUSE OF ACTION

Telephone Consumer Protection Act (Violation of 47 U.S.C. § 227, et. seq.) (On Behalf of Plaintiff and the Do Not Call Registry Class)

60. Plaintiff repeats and realleges the paragraphs 1 through 52 of this Complaint and incorporates them by reference.

ANSWER: Nations Info incorporates its answers to the foregoing allegations as if fully set forth herein.

61. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c), provides that "[n]o person or entity shall initiate any telephone solicitation" to "[a] residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government."

ANSWER: To the extent Paragraph 61 states a legal conclusion, no answer is required. To the extent an answer is required, Nations Info denies the allegations in Paragraph 61.

62. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) and (d) “are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers.”

ANSWER: To the extent Paragraph 62 states a legal conclusion, no answer is required. To the extent an answer is required, Nations Info denies the allegations in Paragraph 62.

63. 47 C.F.R. § 64.1200(d) further provides that “[n]o person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity.”

ANSWER: To the extent Paragraph 63 states a legal conclusion, no answer is required. To the extent an answer is required, Nations Info denies the allegations in Paragraph 63.

64. Any “person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may” may bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers’ privacy rights to avoid receiving telephone solicitations to which they object. 47 U.S.C. § 227(c).

ANSWER: To the extent Paragraph 64 states a legal conclusion, no answer is required. To the extent an answer is required, Nations Info denies the allegations in Paragraph 64.

65. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be initiated, telephone solicitations to telephone subscribers such as Plaintiff and the Do Not Call Registry Class members who registered their respective telephone numbers on the National Do Not Call Registry, a listing of persons who do not wish to receive telephone solicitations that is maintained by the federal government, for at least 30 days.

ANSWER: Nations Info denies the allegations in Paragraph 65.

66. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff and the Do Not Call Registry Class received more than one phone call/text message in a 12-month period by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200, as described above. As a result of Defendant's conduct as alleged herein, Plaintiff and the Do Not Call Registry Class suffered actual damages and are entitled to between \$500 and \$1,500 per violation.

ANSWER: Nations Info denies the allegations in Paragraph 66.

AFFIRMATIVE DEFENSES

Nations Info asserts the following defenses. By setting forth these affirmative defenses, Nations Info does not assume any burden of proof as to any fact issue or other element of any cause of action that properly belongs to Plaintiff. Nations Info reserves the right to supplement, amend, or modify these defenses, as appropriate, based on information obtained during the course of the litigation.

1. **Acts of third parties.** All or part of the damages alleged in the Complaint, if any, were caused by the acts or omissions of other persons or entities for whose conduct Nations Info is not legally responsible.

2. **No agency.** Plaintiff's claims fail, in whole or in part, because Plaintiff has not pleaded any facts plausibly supporting a principle-agent relationship between Nations Info and any marketing company or any other entity.

3. **Statutory defenses in the TCPA.** Nations Info is entitled to each and every defense or limitation of liability set forth in the Telephone Consumer Protection Act and set forth in regulations promulgated under the TCPA.

4. **Failure to state a claim.** The Complaint fails to state a claim against Nations Info, in whole or in part, upon which relief can be granted.

5. **No personal jurisdiction.** The Court lacks personal jurisdiction over Nations Info because Nations Info is not at home in this forum and Nations Info did not take any relevant action purposefully directed at Plaintiff in this forum.

6. **Lack of injury.** Plaintiff's claims fail, in whole or in part, because he has not sustained any cognizable injury or damages.

7. **Lack of causation.** Nations Info was not the direct or proximate cause of Plaintiff's alleged damages.

8. **Consent, waiver, estoppel, ratification, acquiescence, and voluntary action.** Plaintiff's claims fail, in whole or in part, under the doctrines of consent, waiver, estoppel, ratification, acquiescence, and due to her voluntary action, including without limitation because Plaintiff was aware of, ratified, consented to, or benefited from the conduct of which she now complains.

9. **Failure to mitigate.** Plaintiff failed to mitigate her alleged damages.

10. **Adequate remedy at law.** Plaintiff's claims for equitable relief fail because Plaintiff has an adequate remedy at law.

11. **Statute of limitations.** Plaintiff's claims are barred by the applicable statutes of limitations.

12. **Set-off.** Any relief granted to Plaintiff, which Nations Info disputes, must be set-off by the amounts that has been refunded to any Plaintiff or putative class member or by any amount that a Plaintiff or putative class member owes Nations Info or its subsidiaries.

13. **Compliance.** Plaintiff's claims fail, in whole or in part, because Nations Info complied with applicable federal statutes and regulations.

14. **No attorneys' fees.** Plaintiff cannot establish facts sufficient to support his claim for attorneys' fees, and Plaintiff is not entitled to recover attorneys' fees in this action.

15. **Standing.** Plaintiff's claims, and those claims Plaintiff purports to bring on behalf of members of the putative class, are barred in whole or in part because Plaintiff and the putative class members lack standing to assert the alleged claims.

16. **Good Faith.** At all relevant times, Nations Info acted in good faith and with due diligence.

17. **No personal jurisdiction over absent class members.** The court lacks personal jurisdiction over any claims on behalf of absent members of the putative class.

18. **Improper class allegations.** The Complaint has failed to set forth plausible allegations that satisfy the prerequisites for class certification, including without limitation because the claims by Plaintiff are neither common to nor typical of the claims, if any, by members of the putative class, because the putative class is not definite and ascertainable, and because interests of certain members of the putative class are in conflict with the interests of other members of the putative class.

19. **Arbitration.** Some or all of those alleged to be members of the putative class may not prosecute their claims in this Court to the extent those claims are subject to mandatory contractual arbitration.

20. **Due Process.** Awarding Plaintiff or putative class members the relief sought would violate Nation Info's right to due process under the United States Constitution. *See BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 580 (1996).

21. **First Amendment.** As applied, the TCPA violates the First Amendment of the United States Constitution.

JURY TRIAL DEMANDED

Defendant Nations Info Corp., pursuant to Fed. R. Civ. P. 38, hereby demands a trial by jury in this matter of all issues triable of right by a jury.

NATION INFO'S PRAYER FOR RELIEF

Nations Info respectfully requests that this Court:

- A. Enter judgment in Nation Info's favor and against Plaintiff;
- B. Deny certification of a class;
- C. Dismiss all claims by Plaintiff with prejudice;
- D. Award Nations Info its costs;
- E. Award Nations Info its attorneys' fees to the extent permitted by law; and
- F. Grant Nations Info such further relief as the Court deems just and proper.

Dated: February 14, 2020

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